



## 1 **II. LEGAL STANDARD**

2 Federal Rule of Civil Procedure 65 governs preliminary injunctions and temporary  
3 restraining orders, and requires that a motion for temporary restraining order include “specific  
4 facts in an affidavit or a verified complaint [that] clearly show that immediate and irreparable  
5 injury, loss, or damage will result to the movant before the adverse party can be heard in  
6 opposition,” as well as written certification from the movant’s attorney stating “any efforts  
7 made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b).

8 Temporary restraining orders are governed by the same standard applicable to  
9 preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181  
10 F.Supp. 2d 1111, 1126 (E.D. Cal. 2001). Furthermore, a temporary restraining order “should  
11 be restricted to serving [its] underlying purpose of preserving the status quo and preventing  
12 irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Granny Goose*  
13 *Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974).

14 A preliminary injunction may be issued if a plaintiff establishes: (1) likelihood of  
15 success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief;  
16 (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public  
17 interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “Injunctive relief [is]  
18 an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is  
19 entitled to such relief.” *Id.* at 22. The Ninth Circuit has held that ““serious questions going to  
20 the merits’ and a hardship balance that tips sharply toward the plaintiff can support issuance of  
21 an injunction, assuming the other two elements of the *Winter* test are also met.” *Alliance for the*  
22 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011).

## 23 **III. DISCUSSION**

24 Rule 65(b)(1) permits a court to “issue a temporary restraining order without written or  
25 oral notice to the adverse party or its attorney only if: (A) specific facts in an affidavit or a

1 verified complaint clearly show that immediate and irreparable injury, loss, or damage will  
2 result to the movant before the adverse party can be heard in opposition; and (B) the movant's  
3 attorney certifies in writing any efforts made to give notice and the reasons why it should not be  
4 required." Fed. R. Civ. P. 65(b)(1).

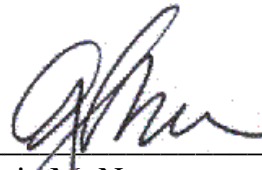
5 Here, Plaintiff has attached an affidavit of his notification to Defendants of his request  
6 for temporary restraining order and preliminary injunction. However, he does not provide a  
7 basis for the Court to find that "immediate and irreparable injury, loss, or damage will result" to  
8 him before Defendants can be heard in opposition, as required by Rule 65(b)(1)(A).

9 Accordingly, the Court finds that the requisite clear showing has not been provided, and that  
10 therefore the Court cannot grant Plaintiff's request for an injunction on an *ex parte* basis. The  
11 Court will consider Plaintiff's request pursuant to his contemporaneously filed Motion for  
12 Preliminary Injunction (ECF No. 27), according to the regular briefing schedule.

13 **IV. CONCLUSION**

14 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Temporary Restraining Order  
15 (ECF No. 26) is **DENIED**.

16 **DATED** this 21st day of May, 2013.

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20 Gloria M. Navarro  
21 United States District Judge  
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